IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1005 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX-II - Appellant(s)

Versus

NITINBHAI T.BHUPATANI - Opponent(s)

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Appearance :
MRS MAUNA M BHATT for Appellant
None for Opponent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 08/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The appellant revenue has proposed the following four questions:

> “[1] Whether the Appellate Tribunal is right in law and on facts in allowing deduction of 30% of the incentive bonus as expenditure, without actual proof of such expenditure having been incurred?
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> [2] Whether the Appellate Tribunal is right in law and on facts in allowing deduction towards expenses, from the incentive bonus, over and above the standard deduction from salary?
>
> [3] Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to allow conveyance allowance under rule 2BB(1)(c) to the extent certified by the LIC as exempt u/s 10(14), without actual proof of such expenses having been incurred by the assessee?
>
> [4] Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to grant deduction of conveyance allowance despite the

amended provisions of Section 10(14) read with rule 2BB(1)(c) of the Rules?”

2.Mr.M.R.Bhatt, the learned senior standing counsel appearing on behalf of the appellant has very vehemently assailed the impugned order of Tribunal on the grounds that, (1) the Tribunal has failed to appreciate that various other High Courts have taken a view contrary to the one adopted by this Court in the case of Commissioner of Income Tax v. Kiranbhai H. Shelat, [1999] 235 ITR 635; and, (2) even if the decision in case of C.I.T. v. Kiranbhai H. Shelat rendered by this Court is applicable, there is no basis for the Tribunal to allow expenses to the tune of 30% of the incentive bonus earned by the assessee. Elaborating on the first ground, he placed reliance on a decision of Madras High Court in the case of Commissioner of Income Tax v. P.Arangasamy, [2000] 242 ITR 563 and the M.P. High Court decision in the case of Commissioner of Income

Tax v. A.K.Ghosh, [2003] 263 ITR 537. In relation to the aforesaid decision of M.P.High Court, he also submitted that Special Leave Petition has been dismissed by the Supreme Court against the said decision. In these circumstances, he urged that the decision rendered by this Court requires reconsideration. It was further submitted that the Tribunal had not discussed any facts or evidence to grant deduction at 30% of the incentive bonus and therefore also, the impugned order of Tribunal date 15/2/2005 was bad in law.

3. In relation to proposed questions No.3 and 4, he submitted that there was no direct decision of this Court on the issue and hence, it gave rise to a substantial question of law, which required consideration at the hands of this Court.

4. Insofar as proposed questions No. 1 and 2 are concerned, the facts are that the assessee claimed 40% of the incentive bonus received by the assessee as expenses incurred for earning the said incentive bonus. The assessing officer disallowed the entire claim and hence, the assessee carried the matter in appeal before Commissioner (Appeals). The Commissioner (appeals) recorded in paragraph No.2.1 of his order fifteen different activities, for which, according to Commissioner (Appeals), “as a matter of fact, expenses were incurred”. While doing so, the Commissioner (Appeals) has noted the total volume of business secured by the assessee for LIC, including number of policies issued and the amount of premium collected for and on behalf of the LIC. These figures have been recorded for assessment years 1997-98 and 1998-99. Thereafter, the Commissioner (Appeals) has taken note of the withdrawals made by the

assessee. He came to the conclusion that the assessee was entitled to deduction of 20% of such expenses.

5. When the matter was carried before the Tribunal, the Tribunal has applied the principles laid down by this Court in case of C.I.T. v. Kiranbhai H. Shelat (supra) and recorded that, “we are satisfied that in these cases, employees have actually incurred expenditure and is entitled to deduction of 30% of the receipts”. The submission of Mr.Bhatt that there was no material available with the Tribunal for recording such a finding, cannot be accepted for the simple reason that it is not possible for the court to ascertain what was the material available before the Tribunal. In these circumstances, it will not be possible to go behind the finding of fact recorded by Commissioner (Appeals) and the Tribunal. If, on the same set of evidence, one appellate

authority has found it reasonable to allow 20% and the other authority has thought it fit to allow 30%, this Court cannot say that such an estimate is perverse so as to give rise to a substantial question of law.

6. Insofar as remaining two questions are concerned, it is apparent that both the Commissioner (Appeals) and the Tribunal have accepted in principle that conveyance allowance and additional conveyance are paid to the Development Officers for meeting the actual expenditure incurred by the Development Officers in discharge of their duties as per law and norms set out in the circular issued by the LIC. Thereafter, what should be the proportion of the amount which should be allowed, cannot form subject matter of a substantial question of law.

7. It is necessary to take note of the fact that

even though the issue of conveyance allowance and additional conveyance allowance was not there before this Court in C.I.T. v. Kiranbhai H. Shelat (supra), the principles enunciated in the said decision would equally govern the allowance or otherwise of the said item of expenditure.

8.In the result, in absence of any substantial question of law, the appeal is dismissed.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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